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Miami-Dade County Public Schools

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Superintendent of Schools

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Executive Officer

Mr. Craig Rinehart
Administrative Director

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Dr. Solomon C. Stinson

May 2, 2006

CC: 02-6

Letter of Appeal

FCC / Office of the Secretary

445 – 12th Street SW

Washington, DC 20554

RE: APPEAL : FCC FORM # 448782 / FRN 1256267

PRECEDENT: Case Involving Pasadena School District (File Nos. SLD-399355, 408239, 408707, 415257 – Paragraph # 9)

Funding Year 2005: 07/01/2005 – 06/30/2006

Initial Funding Commitment Decision Letter (FCDL) dated November 2, 2005

USAC Appeal Decision Letter dated March 27, 2006

Miami-Dade County Public Schools / BEN number 127722

Information pertaining to this Letter of Appeal can be addressed directly to:

Dr. Anthony D. Machado

13135 S.W. 26 Street

Miami, Florida 33175

Office Telephone Number: 305-995-3433 / Fax Number: 305-995-3773

E-Mail address: Tmachado@dadeschools.net

This appeal specifically relates to the reason for the funding denial by the SLD: "...the category of services ordered on the Form 471 is Internet Access and the Category of Service on the referenced Form 470 is Telecommunications." The point was always made on appeal that the issue had nothing to do with the Form 470, but the fact that there was a data entry error made on the FCC Form 471 when selecting "INTERNET" instead of "TELECOMMUNICATIONS" as should have been the case. This simple discrepancy was not corrected during initial PIA contact, even though other applications containing identical errors were corrected on the same PIA review, and by the same reviewer.

Please note that other applications, such as APP# 448735 (FRN 1256796), APP#448782 (FRN 1256533) and others – requesting the same identical service erroneously were corrected by mutual agreement and communication with the PIA reviewer and subsequently funded. In fact, one of the applications (APP# 448794 / FRN 1256628) was also initially denied and on subsequent APPEAL (See attachment) was reversed and APPROVED for funding... Also note that the argument M-DCPS set forth on the approved appeal was *identical* to the argument used on the application subsequently denied and currently under APPEAL thru this letter.

No. of Copies rec'd 093
List A B C D E

In the Pasadena case, the FCC reminds USAC, in Paragraph 9 that, “As an initial matter, we note that reasonable inquiry by USAC and better communication between USAC and the applicant could have resolved the issues that we now face in these Requests for Review. While we have previously noted that the burden of timely and accurately filing rests with the applicant, we are compelled to remind USAC that it retains an obligation to conduct a reasonable inquiry into the filings and materials that USAC itself has in its possession.”

Once again, M-DCPS argues that PIA did contact us to inquire on the matter of Internet vs. Telecommunications entry and the issue should have been resolved then, as it was with other applications containing the identical mistake. As well, please bear in mind that this “glitch” was also discussed in previous SLD publications, whereby the system posted differently than requested. While M-DCPS does not suggest this was the case, it strongly states that the issue was resolved for various other applications containing this same data entry error. This particular application should have been resolved then as well and avoid penalizing our school district unfairly.

Respectfully,

A handwritten signature in black ink, appearing to read "Dr. Anthony D. Machado". The signature is fluid and cursive, with a large, stylized initial "A".

**Dr. Anthony D. Machado
Director II, E-Rate Management / M-DCPS**

Enclosures



Universal Service Administrative Company
Schools & Libraries Division

FUNDING COMMITMENT DECISION LETTER
(Funding Year 2005: 07/01/2005 - 06/30/2006)

November 2, 2005

Dr. Anthony D. Machado
MIAMI-DADE COUNTY PUBLIC SCHOOLS
13135 SW 26 St.
Miami, FL 33175-1817

Re: Form 471 Application Number 448782
Funding Year 2005: 07/01/2005 - 06/30/2006
Billed Entity Number: 127722
Billed Entity FCC RN: 000542883
Applicant's Form Identifier: Districtwide - T1's - Frame Relay (DATA)

Thank you for your Funding Year 2005 E-rate application and for any assistance you provided throughout our review. Here is the current status of the funding request(s) featured in the Funding Commitment Report at the end of this letter.

- The amount, \$1,456,875.50 is "Denied."

Please refer to the Funding Commitment Report on the page following this letter for specific funding request decisions and explanations.

The Important Reminders and Deadlines immediately preceding this letter are provided to assist you throughout the application process.

NEXT STEPS

- Work with your service provider to determine if you will receive discounted bills or if you will request reimbursement from USAC after paying your bills in full
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- Review CIPA Requirements
- File Form 486
- Invoice the SLD using the Form 474 (service provider) or Form 472 (Billed Entity) - as products and services are being delivered and billed

FUNDING COMMITMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Report for the Form 471 application cited above. The enclosed report includes a list of the Funding Request Number(s) (ERNs) from your application. The SLD is also sending this information to your service provider(s) so preparations can be made to begin implementing your E-rate discount(s) after you file your Form 486. Immediately preceding the Funding Commitment Report, you will find a guide that provides a definition for each line of the Report.

TO APPEAL THIS DECISION:

If you wish to appeal a decision in this letter, your appeal must be received by the SLD or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) e-mail address for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Include the following to identify the letter and the decision you are appealing:
 - Appellant name,
 - Applicant name and service provider name, if different from appellant,

Box 125 Correspondence Unit, 80 South Jefferson Road, Whippany, New Jersey, 07981

Visit us online at: www.sl.universalservice.org



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Ms. Deborah Karcher

Administrative Director - ITS
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Director II - E-Rate Management
Anthony D. Machado, Ed.D.

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December 21, 2005

LETTER OF APPEAL

Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

MIAMI-DADE COUNTY PUBLIC SCHOOLS

ENTITY CODE: 127722

Dr. Anthony D. Machado
13135 SW 26 Street
Miami, Florida 33175

tel. # 305-995-3433
fax # 305-995-3773
E-Mail Address: TMachado@DadeSchools.net

RE: APPEAL for Application Number 448782 / Funding Request Number 1256267

The reason for denial is stated as: "The 470 cited did not include service of this type..." However, the issue at hand has nothing to do with the 470 cited. Thus M-DCPS is appealing this ruling. During PIA review, I was contacted to clarify the box we had mistakenly checked off for Internet Access, instead of Telecommunications Services - as it should have been checked. It was clarified at the time that this was a simple data entry error. In fact, this typographical error was obvious, considering all the enclosed supporting information for this request was for Frame Relay services. In fact, the application's name in the Applicant's Form Identifier spells it out... : "**Districtwide - T1's - Frame Relay (DATA)**." Clearly, this has nothing to do with Internet Access.

While M-DCPS recognizes its own data entry error, it is also our understanding that PIA can, and often assists in clarifying this kind of minor correction. As such, we were led to believe this had been resolved on initial contact. Thus, we appeal to your positive judgment and reverse this funding decision.

Sincerely,

Dr. Anthony D. Machado, Director II
Director II / E-Rate Management / MDCPS



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

March 27, 2006

Dr. Anthony D. Machado
Miami-Dade County Public Schools
13135 SW 26 Street
Miami, FL 33175

Re: Applicant Name: MIAMI-DADE COUNTY PUBLIC
SCHOOLS
Billed Entity Number: 127722
Form 471 Application Number: 448782
Funding Request Number(s): 1256267
Your Correspondence Dated: December 21, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1256267
Decision on Appeal: **Denied**
Explanation:

- On appeal, you are seeking reconsideration of PIA's decision to deny the above-listed FRN. You state the incorrect service category was inadvertently checked on the 470. You also state that you were contacted by PIA to clarify if this was a data entry error. You assert that the supporting documentation showed that the request was for Data Frame Relay Service, which is not Internet Access. You conclude that you believe that PIA corrected this error during your initial contact with them.
- Upon thorough review of the appeal letter and the relevant documentation, the SLD has determined that the services ordered on the Form 471 were not open to bid on the referenced Form 470. This is a violation of the Schools and Libraries



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December 21, 2005

LETTER OF APPEAL

Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

MIAMI-DADE COUNTY PUBLIC SCHOOLS

ENTITY CODE: 127722

Dr. Anthony D. Machado
13135 SW 26 Street
Miami, Florida 33175

tel. # 305-995-3433

fax # 305-995-3773

E-Mail Address: TMachado@DadeSchools.net

RE: APPEAL for Application Number 448794 / Funding Request Number 1256628

The reason for denial is stated as: "The 470 cited did not include service of this type..." However, the issue at hand has nothing to do with the 470 cited. Thus M-DCPS is appealing this ruling. During PIA review, I was contacted to clarify the box we had mistakenly checked off for Internet Access, instead of Telecommunications Services – as it should have been checked. It was clarified at the time that this was a simple data entry error. In fact, this typographical error was obvious, considering all the enclosed supporting information for this request was for regular Telecom Services. In fact, the application's name in the Applicant's Form Identifier spells it out... : **"ITS – Telecom Services."** Clearly, this has nothing to do with Internet Access.

While M-DCPS recognizes its own data entry error, it is also our understanding that PIA can, and often assists in clarifying this kind of minor correction. As such, we were led to believe this had been resolved on initial contact. Thus, we appeal to your positive judgment and reverse this funding decision.

Sincerely,

Dr. Anthony D. Machado, Director II
Director II / E-Rate Management / MDCPS



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

February 16, 2006

Dr. Anthony D. Machado
Miami-Dade County Public Schools
13135 SW 26 Street
Miami, FL 33175

Re: Applicant Name: MIAMI-DADE COUNTY PUBLIC
SCHOOLS
Billed Entity Number: 127722
Form 471 Application Number: 448794
Funding Request Number(s): 1256628
Your Correspondence Dated: December 21, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1256628
Decision on Appeal: **Approved**
Explanation:

- Your appeal has brought forward persuasive information that the funding request(s) cited above should be approved for funding.

Since the Administrator's Decision on Appeal approves additional funding for your application, SLD will issue a Revised Funding Commitment Decision Letter (RFCDL) to you and to each service provider that will provide the services approved for discounts in this letter. SLD will issue the RFCDL to you as soon as possible. The RFCDL will inform you of the precise dollar value of your approved funding request. As you await the RFCDL, you may share this Administrator's Decision on Appeal with the relevant service provider(s).



Universal Service Administrative Company
Schools & Libraries Division

Revised Funding Commitment Decision Letter
(Funding Year 2005: 07/01/2005 - 06/30/2006)

March 14, 2006

MIAMI-DADE COUNTY PUBLIC SCHOOLS
Dr. Anthony D. Machado
13135 SW 26 St.
Miami, FL 33175-1817

RE: Form 471 Application Number: 448794
Billed Entity Number: 127722
Applicant's Form Identifier: ITS - Telecom Svces

This letter is the official Funding Commitment Decision Letter (FCDL) providing you with the dollar value and other details of the funding commitment(s) made for the FCC Form 471 Application identified above in response to your appeal.

The Funding Commitment Report (Report) that follows this Revised FCDL contains a list of items that were included in your original FCDL. An explanation of the items in the attached report is included in the sample FCDL posted to the SLD section of the USAC web site, and was included in your original FCDL. Depending on the nature of your appeal, this Report may have been updated to reflect the new total amount of discount for a funding request. Applicants should use THIS updated information when completing the FCC Form 486, if Form 486 has not already been submitted.

This same information is being sent to the service provider(s) whose Service Provider Identification Number (SPIN) was featured in your funding request(s). We urge you to contact your service provider(s) to make any necessary arrangements regarding delivery of service and provision of your discounts.

IMPLEMENTATION TIMEFRAME

The Federal Communications Commission (FCC) released on June 29, 2001, an Order extending the implementation period for non-recurring services. Any non-recurring service for which funds are committed in this letter may be delivered and installed up to September 30, 2007. Support for recurring services, however, is available only for services provided during the period July 01, 2005 through June 30, 2006.

If Forms 486 have not already been submitted for these services provided by this service provider as identified by the SPIN in the attached Funding Report, Forms 486 must be received or postmarked no later than 120 days after the Service Start Date, or 120 days after the date of an FCDL that approves funding, whichever is later, to receive discounts retroactively to the Service Start Date. If any funding was approved in the original FCDL and any services were provided by the service provider whose SPIN was referenced in the original Funding Report, the deadlines described above are calculated based on the original FCDL. If these services are approved as a result of a SPIN Correction, a new Form 486 will be required to allow invoicing for such services.

NEXT STEPS

Once you have reviewed this letter and have determined that some or all of your requests have been funded, your next step will be to facilitate receipt of discounts as explained in this letter.

RECURRING SERVICES: In order to receive reimbursement, you must file Form 486, Receipt of Service Confirmation Form, if it has not already been filed. The Form

Headlines:

- Wave 37 Funding for FY 2005
- New Applicant-Friendly FCC Appeal Decisions
- Impact of New FCC Katrina Waiver
- SLD News Briefs and Tip Sheets

Introduction

This newsletter is part of the Metropolitan E-Rate Exchange, a service provided by E-Rate Central and tailored specifically to the E-rate needs of large urban school districts. To subscribe or unsubscribe to this service, please e-mail: Webmaster@e-ratecentral.com. Please include basic contact information to validate a new subscription.

Wave 37 Funding for FY 2005

Wave 37 for FY 2005 is scheduled to be released on Wednesday, March 8th, for an estimated \$14 million. This will bring total FY 2005 funding to \$1.35 billion, still over 20% behind last year's funding schedule. Internal Connections funding remains at the 90% discount level.

New Applicant-Friendly FCC Appeal Decisions

Although the FCC backlog on E-rate appeals continues to grow, several significant decisions have been released over the past few months that suggest growing FCC concern with overly harsh SLD review procedures and denials (often involving large applicants). Four FCC decisions released last week fit this pattern.

Wyoming was the beneficiary of two decisions involving state procurement rules, one which waived a procurement timing rule,¹ and one which clarifies the E-rate rule that price must be the primary factor in a bid assessment.² The following two points should be noted:

1. As the basis for waiving a Form 470 filing requirement in the first Wyoming case, because of very special circumstances, the FCC more generally stated:

"...we find that there is a presumption that if an entity is in compliance with state procurement law, that the competitive bidding process is lawful and in compliance with our rules."

¹ See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-484A1.doc.

² See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-485A1.doc.

2. In the second Wyoming case, the FCC referenced its earlier *Ysleta Order*³ of 2003 that held that price must be “the” primary factor in bid assessments, not just “a” primary factor. The decision goes on to stress, however, that:

"Although the Commission has concluded that price should be the primary factor in selecting a bid, applicants are given maximum flexibility to take service quality into account and may choose the offering that meets their needs most effectively and efficiently."

A third decision provided a waiver of a longstanding position of both the SLD and the FCC that applicants will not be excused for missing key deadlines as a result of internal problems such as school closings, personnel changes or illnesses, etc.⁴ In the case of the Greenfield school district, which failed to respond to a PIA inquiry because its E-rate coordinator had been called to active duty, the FCC concluded that:

"...given the importance of military service during a time of war, we find that it would be inconsistent with the public interest to penalize Greenfield for its employee's sudden departure to fulfill his military obligations."

The fourth decision is particularly applicant-friendly — or, perhaps more accurately, “USAC-unfriendly.” The case involved the Pasadena school district’s use of telecom and Internet services received over multiple funding years pursuant to a California master contract.⁵ The details of the FCC’s decision are less important than the language of the FCC’s rebuke of SLD review procedures which reads:

"As an initial matter, we note that reasonable inquiry by USAC and better communication between USAC and the applicant could have resolved the issues that we now face in these Requests for Review. While we have previously noted that the burden of timely and accurately filing rests with the applicant, we are compelled to remind USAC that it retains an obligation to conduct a reasonable inquiry into the filings and materials that USAC itself has in its possession."⁶

The footnote at the end of this paragraph includes even stronger language. It states:

“²⁹ We acknowledge that USAC, arguably, would have had to conduct further inquiry to establish the signature date of the 2004 Authorization. However, we find it inconceivable that USAC would rely on a 2000 signature date, but not the accompanying 2000 FCC Form 471, or, in the alternative, review the 2004 FCC Form 471 but ignore the possible existence of a 2004 contract, particularly when ALL of the documents necessary to sort out the confusion were, at all times during the review and appeal process, within the possession of USAC by virtue of the applicant’s filing such documents with USAC. We cannot condone USAC’s blindly relying on the burden of proof to the point of ignoring information it already has simply because the applicant fails to “refile” or reproduce it.”

³ See http://www.e-ratecentral.com/FCC/FCC_03-313A1.pdf.

⁴ See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-487A1.doc.

⁵ See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-486A1.doc.

Machado, Anthony (Tony) D.

From: Catriona Ayer [cayer@usac.org]
Sent: Sunday, May 14, 2006 1:59 PM
To: Machado, Anthony (Tony) D.
Subject: RE: Question on Appeal to FCC

Tony,

Thank you for the email. I think that at this point, it would be best for you to send this to the FCC.

Catriona

From: Machado, Anthony (Tony) D. [mailto:TMachado@dadeschools.net]
Sent: Tuesday, May 09, 2006 3:25 PM
To: Catriona Ayer
Subject: FW: Question on Appeal to FCC

Catriona,

Thanks in advance for taking the time to review this case.

This is the matter I asked you about at the end of last week's CGCS conference call.

I have not yet sent the appeal letter to the FCC that I've included electronically.

I'm convinced that it is a case of oversight somewhere as all the other applications involved were cleared out. I'm also including the one that later had to go thru the appeal process at the SLD and for which I used an identical letter asking that the change and subsequent approval be carried out. One was approved – the other one denied!

If there's anything you can do, I'd greatly appreciate it.

If not, I'll understand. Just let me know, if that's the case, so I can move it up the line.

Thanks again for your time and involvement.

Tony

Dr. Anthony D. Machado
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5/15/2006



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May 2, 2006

Letter of Appeal

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Washington, DC 20554

CC: 62-6

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**Dr. Anthony D. Machado
Director II, E-Rate Management / M-DCPS**

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Schools & Libraries Division

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December 21, 2005

LETTER OF APPEAL

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80 South Jefferson Road
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MIAMI-DADE COUNTY PUBLIC SCHOOLS

ENTITY CODE: 127722

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RE: APPEAL for Application Number 448782 / Funding Request Number 1256267

The reason for denial is stated as: "The 470 cited did not include service of this type..." However, the issue at hand has nothing to do with the 470 cited. Thus M-DCPS is appealing this ruling. During PIA review, I was contacted to clarify the box we had mistakenly checked off for Internet Access, instead of Telecommunications Services – as it should have been checked. It was clarified at the time that this was a simple data entry error. In fact, this typographical error was obvious, considering all the enclosed supporting information for this request was for Frame Relay services. In fact, the application's name in the Applicant's Form Identifier spells it out... : "*Districtwide – T1's – Frame Relay (DATA)*." Clearly, this has nothing to do with Internet Access.

While M-DCPS recognizes its own data entry error, it is also our understanding that PIA can, and often assists in clarifying this kind of minor correction. As such, we were led to believe this had been resolved on initial contact. Thus, we appeal to your positive judgment and reverse this funding decision.

Sincerely,

Dr. Anthony D. Machado, Director II
Director II / E-Rate Management / MDCPS



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

March 27, 2006

Dr. Anthony D. Machado
Miami-Dade County Public Schools
13135 SW 26 Street
Miami, FL 33175

Re: Applicant Name: MIAMI-DADE COUNTY PUBLIC
SCHOOLS
Billed Entity Number: 127722
Form 471 Application Number: 448782
Funding Request Number(s): 1256267
Your Correspondence Dated: December 21, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1256267
Decision on Appeal: **Denied**
Explanation:

- On appeal, you are seeking reconsideration of PIA's decision to deny the above-listed FRN. You state the incorrect service category was inadvertently checked on the 470. You also state that you were contacted by PIA to clarify if this was a data entry error. You assert that the supporting documentation showed that the request was for Data Frame Relay Service, which is not Internet Access. You conclude that you believe that PIA corrected this error during your initial contact with them.
- Upon thorough review of the appeal letter and the relevant documentation, the SLD has determined that the services ordered on the Form 471 were not open to bid on the referenced Form 470. This is a violation of the Schools and Libraries



Miami-Dade County Public Schools

giving our students the world

Superintendent of Schools
Rudolph F. Crew, Ed.D.

Executive Officer - ITS
Ms. Deborah Karcher

Administrative Director - ITS
Mr. Craig Rinehart.

Director II – E-Rate Management
Anthony D. Machado, Ed.D.

Miami-Dade County School Board
Frank J. Bolaños, Chair
Dr. Robert B. Ingram, Vice Chair
Agustin J. Barrera
Evelyn Langlieb Greer
Perla Tabares Hantman
Dr. Martin Karp
Ana Rivas Logan
Dr. Marta Pérez
Dr. Solomon C. Stinson

December 21, 2005

LETTER OF APPEAL

Schools and Libraries Division
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

MIAMI-DADE COUNTY PUBLIC SCHOOLS

ENTITY CODE: 127722

Dr. Anthony D. Machado
13135 SW 26 Street
Miami, Florida 33175

tel. # 305-995-3433
fax # 305-995-3773
E-Mail Address: TMachado@DadeSchools.net

RE: APPEAL for Application Number 448794 / Funding Request Number 1256628

The reason for denial is stated as: "The 470 cited did not include service of this type..." However, the issue at hand has nothing to do with the 470 cited. Thus M-DCPS is appealing this ruling. During PIA review, I was contacted to clarify the box we had mistakenly checked off for Internet Access, instead of Telecommunications Services – as it should have been checked. It was clarified at the time that this was a simple data entry error. In fact, this typographical error was obvious, considering all the enclosed supporting information for this request was for regular Telecom Services. In fact, the application's name in the Applicant's Form Identifier spells it out... : **"ITS – Telecom Services."** Clearly, this has nothing to do with Internet Access.

While M-DCPS recognizes its own data entry error, it is also our understanding that PIA can, and often assists in clarifying this kind of minor correction. As such, we were led to believe this had been resolved on initial contact. Thus, we appeal to your positive judgment and reverse this funding decision.

Sincerely,

Dr. Anthony D. Machado, Director II
Director II / E-Rate Management / MDCPS



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2005-2006

February 16, 2006

Dr. Anthony D. Machado
Miami-Dade County Public Schools
13135 SW 26 Street
Miami, FL 33175

Re: Applicant Name: MIAMI-DADE COUNTY PUBLIC
SCHOOLS
Billed Entity Number: 127722
Form 471 Application Number: 448794
Funding Request Number(s): 1256628
Your Correspondence Dated: December 21, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2005 Funding Commitment Decision Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1256628
Decision on Appeal: **Approved**
Explanation:

- Your appeal has brought forward persuasive information that the funding request(s) cited above should be approved for funding.

Since the Administrator's Decision on Appeal approves additional funding for your application, SLD will issue a Revised Funding Commitment Decision Letter (RFCDL) to you and to each service provider that will provide the services approved for discounts in this letter. SLD will issue the RFCDL to you as soon as possible. The RFCDL will inform you of the precise dollar value of your approved funding request. As you await the RFCDL, you may share this Administrator's Decision on Appeal with the relevant service provider(s).



48-3-CD1

Universal Service Administrative Company
Schools & Libraries Division

Revised Funding Commitment Decision Letter
(Funding Year 2005: 07/01/2005 - 06/30/2006)

March 14, 2006

MIAMI-DADE COUNTY PUBLIC SCHOOLS
Dr. Anthony D. Machado
13135 SW 26 St.
Miami, FL 33175-1817

RE: Form 471 Application Number: 448794
Billed Entity Number: 127722
Applicant's Form Identifier: ITS - Telecom Svces

This letter is the official Funding Commitment Decision Letter (FCDL) providing you with the dollar value and other details of the funding commitment(s) made for the FCC Form 471 Application identified above in response to your appeal.

The Funding Commitment Report (Report) that follows this Revised FCDL contains a list of items that were included in your original FCDL. An explanation of the items in the attached report is included in the sample FCDL posted to the SLD section of the USAC web site, and was included in your original FCDL. Depending on the nature of your appeal, this Report may have been updated to reflect the new total amount of discount for a funding request. Applicants should use THIS updated information when completing the FCC Form 486, if Form 486 has not already been submitted.

This same information is being sent to the service provider(s) whose Service Provider Identification Number (SPIN) was featured in your funding request(s). We urge you to contact your service provider(s) to make any necessary arrangements regarding delivery of service and provision of your discounts.

IMPLEMENTATION TIMEFRAME

The Federal Communications Commission (FCC) released on June 29, 2001, an Order extending the implementation period for non-recurring services. Any non-recurring service for which funds are committed in this letter may be delivered and installed up to September 30, 2007. Support for recurring services, however, is available only for services provided during the period July 01, 2005 through June 30, 2006.

If Forms 486 have not already been submitted for these services provided by this service provider as identified by the SPIN in the attached Funding Report, Forms 486 must be received or postmarked no later than 120 days after the Service Start Date, or 120 days after the date of an FCDL that approves funding, whichever is later, to receive discounts retroactively to the Service Start Date. If any funding was approved in the original FCDL and any services were provided by the service provider whose SPIN was referenced in the original Funding Report, the deadlines described above are calculated based on the original FCDL. If these services are approved as a result of a SPIN Correction, a new Form 486 will be required to allow invoicing for such services.

NEXT STEPS

Once you have reviewed this letter and have determined that some or all of your requests have been funded, your next step will be to facilitate receipt of discounts as explained in this letter.

RECURRING SERVICES: In order to receive reimbursement, you must file Form 486, Receipt of Service Confirmation Form, if it has not already been filed. The Form

Headlines:

- Wave 37 Funding for FY 2005
- New Applicant-Friendly FCC Appeal Decisions
- Impact of New FCC Katrina Waiver
- SLD News Briefs and Tip Sheets

Introduction

This newsletter is part of the Metropolitan E-Rate Exchange, a service provided by E-Rate Central and tailored specifically to the E-rate needs of large urban school districts. To subscribe or unsubscribe to this service, please e-mail: Webmaster@e-ratecentral.com. Please include basic contact information to validate a new subscription.

Wave 37 Funding for FY 2005

Wave 37 for FY 2005 is scheduled to be released on Wednesday, March 8th, for an estimated \$14 million. This will bring total FY 2005 funding to \$1.35 billion, still over 20% behind last year's funding schedule. Internal Connections funding remains at the 90% discount level.

New Applicant-Friendly FCC Appeal Decisions

Although the FCC backlog on E-rate appeals continues to grow, several significant decisions have been released over the past few months that suggest growing FCC concern with overly harsh SLD review procedures and denials (often involving large applicants). Four FCC decisions released last week fit this pattern.

Wyoming was the beneficiary of two decisions involving state procurement rules, one which waived a procurement timing rule,¹ and one which clarifies the E-rate rule that price must be the primary factor in a bid assessment.² The following two points should be noted:

1. As the basis for waiving a Form 470 filing requirement in the first Wyoming case, because of very special circumstances, the FCC more generally stated:

"...we find that there is a presumption that if an entity is in compliance with state procurement law, that the competitive bidding process is lawful and in compliance with our rules."

¹ See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-484A1.doc.

² See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-485A1.doc.

2. In the second Wyoming case, the FCC referenced its earlier *Ysleta Order*³ of 2003 that held that price must be “the” primary factor in bid assessments, not just “a” primary factor. The decision goes on to stress, however, that:

“Although the Commission has concluded that price should be the primary factor in selecting a bid, applicants are given maximum flexibility to take service quality into account and may choose the offering that meets their needs most effectively and efficiently.”

A third decision provided a waiver of a longstanding position of both the SLD and the FCC that applicants will not be excused for missing key deadlines as a result of internal problems such as school closings, personnel changes or illnesses, etc.⁴ In the case of the Greenfield school district, which failed to respond to a PIA inquiry because its E-rate coordinator had been called to active duty, the FCC concluded that:

“...given the importance of military service during a time of war, we find that it would be inconsistent with the public interest to penalize Greenfield for its employee’s sudden departure to fulfill his military obligations.”

The fourth decision is particularly applicant-friendly — or, perhaps more accurately, “USAC-unfriendly.” The case involved the Pasadena school district’s use of telecom and Internet services received over multiple funding years pursuant to a California master contract.⁵ The details of the FCC’s decision are less important than the language of the FCC’s rebuke of SLD review procedures which reads:

“As an initial matter, we note that reasonable inquiry by USAC and better communication between USAC and the applicant could have resolved the issues that we now face in these Requests for Review. While we have previously noted that the burden of timely and accurately filing rests with the applicant, we are compelled to remind USAC that it retains an obligation to conduct a reasonable inquiry into the filings and materials that USAC itself has in its possession.”²⁹

The footnote at the end of this paragraph includes even stronger language. It states:

“²⁹ We acknowledge that USAC, arguably, would have had to conduct further inquiry to establish the signature date of the 2004 Authorization. However, we find it inconceivable that USAC would rely on a 2000 signature date, but not the accompanying 2000 FCC Form 471, or, in the alternative, review the 2004 FCC Form 471 but ignore the possible existence of a 2004 contract, particularly when ALL of the documents necessary to sort out the confusion were, at all times during the review and appeal process, within the possession of USAC by virtue of the applicant’s filing such documents with USAC. We cannot condone USAC’s blindly relying on the burden of proof to the point of ignoring information it already has simply because the applicant fails to “refile” or reproduce it.”

³ See http://www.e-ratecentral.com/FCC/FCC_03-313A1.pdf.

⁴ See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-487A1.doc.

⁵ See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-486A1.doc.

Machado, Anthony (Tony) D.

From: Catriona Ayer [cayer@usac.org]
Sent: Sunday, May 14, 2006 1:59 PM
To: Machado, Anthony (Tony) D.
Subject: RE: Question on Appeal to FCC

Tony,

Thank you for the email. I think that at this point, it would be best for you to send this to the FCC.

Catriona

From: Machado, Anthony (Tony) D. [mailto:TMachado@dadeschools.net]
Sent: Tuesday, May 09, 2006 3:25 PM
To: Catriona Ayer
Subject: FW: Question on Appeal to FCC

Catriona,

Thanks in advance for taking the time to review this case.

This is the matter I asked you about at the end of last week's CGCS conference call.

I have not yet sent the appeal letter to the FCC that I've included electronically.

I'm convinced that it is a case of oversight somewhere as all the other applications involved were cleared out. I'm also including the one that later had to go thru the appeal process at the SLD and for which I used an identical letter asking that the change and subsequent approval be carried out. One was approved – the other one denied!

If there's anything you can do, I'd greatly appreciate it.

If not, I'll understand. Just let me know, if that's the case, so I can move it up the line.

Thanks again for your time and involvement.

Tony

Dr. Anthony D. Machado
Director II
Miami-Dade County Public Schools
TMachado@DadeSchools.net
(305) 995-3433

5/15/2006